

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,) CASE NO. CR04-334-JCC
)
Plaintiff,)
)
v.) ORDER DENYING REQUEST TO
) REOPEN DETENTION HEARING
KYLE GIANIS,)
)
Defendant.)
_____)

Defendant Kyle Gianis is charged by Indictment with one count of Conspiracy - Possession of ephedrine with the Intent to Distribute in violation of title 21, U.S.C. Section 841(c) and 846. (Dkt. 1.) The Honorable Monica J. Benton, United States Magistrate Judge, conducted a detention hearing on February 6, 2008, following which defendant was ordered detained. (Dkt. 9.)

Now before the Court is defendant's Motion for Reconsideration of Pretrial Detention Order. (Dkt. 15.) The Honorable John C. Coughenour referred the motion to the undersigned. (Dkt. 17.) The Court finds this motion appropriate for resolution without oral argument, and without the necessity of a response from the United States.

ORDER DENYING REQUEST TO
REOPEN DETENTION HEARING
PAGE -1

01 Defendant moves for “reconsideration”¹ of the pretrial detention order, although the relief
02 sought is to reopen the hearing as set forth in 18 U.S.C. § 3142(b)(2)(B). That statute provides
03 that a detention hearing may be reopened “if the judicial officer finds that information exists that
04 was not known to the movant at the time of the hearing and that has a material bearing on the issue
05 whether there are conditions of release that will reasonably assure the appearance of such person
06 as required and the safety of any other person and the community.” *Id.*

07 Defendant bases his motion “on the fact that Mr. Gianis never received notice that he was
08 under indictment; rather, he discovered the investigation only upon being denied entry into Mexico
09 due to the federal warrant for his arrest in the United States.” (Dkt. 15 at 1.) Defendant suggests
10 he would have returned voluntarily to address the charges if he had been aware they were pending.

11 However, because Judge Benton did not base her detention order on defendant’s lack of
12 voluntary surrender, defendant fails to show that this information would have a material bearing
13 on the issue of detention. Judge Benton found defendant to pose a risk of nonappearance due to
14 his status as a non-citizen against whom an immigration detainer had been lodged, and a risk of
15 danger based on past criminal history involving a firearms charge in Canada and the nature of the
16 current charges. Further, as Judge Benton noted, the pending drug charge carries a potential
17 maximum penalty in excess of ten years, therefore giving rise to a rebuttable presumption of both
18 dangerousness and flight risk under 18 U.S.C. § 3142(e). Judge Benton did not find that the
19 record effectively rebutted the presumption, and so ordered defendant detained. Finally, defendant
20 fails to show that the proffered reason for reconsideration – his lack of knowledge of the pending

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22 ¹ In the body of the motion, however, defendant asks for “review and revocation” of the
detention order.

01 charges – is information that was not known to him at the time of the hearing.

02 For the reasons described above, defendant's motion to reopen the detention hearing is
03 DENIED. The Clerk shall send a copy of this Order to counsel for the parties and to Judge
04 Coughenour.

05 DATED this 19th day of March, 2008.

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07 Mary Alice Theiler
08 United States Magistrate Judge
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